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Counsel Sums Up Case Against CBS to Date

Westmoreland Is Due to Testify Today

By Eleanor Randolph
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NEW YORK, Nov. 14—Citing five weeks of testimony and 14 witnesses supporting his side of the case, the key attorney for retired Army general William C. Westmoreland said today that "nobody's in the dark now and nobody was in the dark then" about enemy troop data in South Vietnam.

Dan M. Burt, Westmoreland's lead attorney in his \$120 million libel suit against CBS Inc., told the jury in one of the "mini-summations" allowed by U.S. District Court Judge Pierre Leval in the long case, that there was "no conscious effort, no conspiracy" to suppress and alter troop data by Westmoreland in 1967.

Burt's analysis of the case to date, which was immediately challenged by CBS attorney David Boies, came on the eve of what is expected to be one of the high points the trial, Westmoreland's first hours on the stand, scheduled for Thursday morning.

The 70-year-old general, who said he was defamed by a January 1982 CBS Reports documentary called "The Uncounted Enemy: A Vietnam Deception," is expected to deny vigorously the program's assertion that there was a conspiracy at the "highest levels of military intelligence" to deprive the press, public and even President Lyndon B. Johnson of accurate troop data.

The broadcast said the alleged suppression of higher enemy troop-level figures in 1967 meant that many Americans were surprised at the massive uprising by the communists during the Tet offensive in January 1968. Until that time, the nation had been assured by Westmoreland and others that the enemy was running out of troops, the broadcast said.

CBS lawyer Boies, who also used a portion of the two hours the judge has allowed each lawyer for occasional pitches to the jury, said that even though the testimony of 14 witnesses was designed to help Westmoreland, some of them had bolstered the CBS case.

Boies said four of Westmoreland's witnesses had testified that there was a "command position" at Westmoreland's Military Assistance Command, Vietnam (MACV) that enemy troop estimates could not go above a ceiling of 300,000 in 1967 official summaries.

A spokesman for CBS said those four were Robert Komer, who was in charge of the American "pacification" program in Vietnam; retired brigadier general George Godding, who was the head of a MACV delegation that went to Washington in August 1967 to hammer out differences in troop estimates with the CIA; retired brigadier general Philip Davidson, MACV's chief of intelligence during the period, and retired colonel Charles Morris,

MACV's director of intelligence production.

Still, in most testimony, each side found something that supports its view and attacks the opposition's. Such was the case again today when Burt showed portions of an unedited CBS interview with retired major general Joseph McChristian, Westmoreland's intelligence chief in early 1967.

In the interview, which closed the day's testimony and drew several yawns from the jury, McChristian said he was shaken at Westmoreland's response in May 1967 when he produced new, higher enemy troop data.

McChristian, who is expected to be a key witness for CBS, remembered the general's primary response was that it would create a "political bombshell" in Washington. Shortly after that, McChristian was transferred to another post in the United States. During the interview he said that the transfer came at the regular rotation time, but he said that "more than likely I was moved out of there to get me out of the way."

Burt, in another appeal to the jury, noted that McChristian does not recall what happened to his troop estimates because he was transferred out of MACV a few weeks later.

And, he said his answer to a hypothetical question about tampering with enemy troop data by CBS producer George Crile was "taken out of context" in the show and used as a criticism of Westmoreland.

Boies said that it was obvious that McChristian's answer to the hypothetical question was that imposing political restraints on intelligence, which is what McChristian said Westmoreland seemed ready to do, was "improper."